EXHIBIT 2

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1	IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
2	RICHMOND DIVISION
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4	ePLUS, INC., :
5	Plaintiff, :
6	v. : Civil Action : No. 3:09CV620
7	LAWSON SOFTWARE, INC., : January 22, 2010
8	Defendant. :
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11	COMPLETE TRANSCRIPT OF MARKMAN HEARING
12	BEFORE THE HONORABLE ROBERT E. PAYNE UNITED STATES DISTRICT JUDGE
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15	APPEARANCES:
16	Scott L. Robertson, Esq.
17	Jennifer A. Albert, Esq. GOODWIN PROCTOR
18	901 New York Avenue, NW Washington, D.C. 20001
19	Craig T. Merritt, Esq.
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22	Counsel for the plaintiff ePlus
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24	DIANE J. DAFFRON, RPR OFFICIAL COURT REPORTER
25	UNITED STATES DISTRICT COURT

- 1 are different than in the specifications, and then you
- 2 get into litigation, and lawyers concoct entirely
- 3 different scenarios from what the real words actually
- 4 used 10 years ago or 20 years ago mean. That's what
- 5 the problem is. But we're dealing with it in the
- 6 framework that's been dictated to us. So that's what
- 7 we have to use.
- 8 Who is the person of ordinary skill in the
- 9 art at the time of filing? And how do I know who that
- 10 person is from your standpoint?
- MR. ROBERTSON: Your Honor, I believe in the
- 12 past we've said it's somebody with probably a
- 13 bachelor's of science or equivalent in the computer
- 14 science, computer architecture, that probably has some
- 15 experience, perhaps one to two years in procurement,
- 16 electronic sourcing.
- Does the patent expressly recite that? No.
- 18 But I think we've had experts in the past who have
- 19 looked at it and said that would be the person of
- 20 ordinary skill in the art. And that's pretty much what
- 21 we have with regard to the inventors that were involved
- 22 here.
- There were four inventors. They were
- 24 employed by a company called Fisher Scientific in their
- 25 information and technology department. And they have

- 1 worked on a series of projects over a number of years
- 2 that are described in the background of the invention
- 3 to help manage Fisher Scientific's requisitions and
- 4 inventory. And then they struck upon this electronic
- 5 sourcing invention, which, as I say, is described in
- 6 the three patents.
- 7 THE COURT: Are you all in agreement about
- 8 who is the person of ordinary skill in the art? Do you
- 9 agree?
- 10 MR. McDONALD: I think Mr. Robertson
- 11 characterized it as generally how I would as well, Your
- 12 Honor.
- 13 THE COURT: But neither one of you, unless I
- 14 can't read, mention that in your papers.
- MR. McDONALD: No. I think as we're using
- 16 the specification and intrinsic record here. Whether
- 17 somebody has two years of industry experience or eight
- 18 doesn't really move the answer to the questions. So I
- 19 don't think either one of us really focused on that.
- 20 THE COURT: How am I supposed to know how the
- 21 person of ordinary skill in the art would interpret the
- 22 words used in this patent without hearing from a person
- 23 of ordinary skill in the art?
- MR. ROBERTSON: Well, Your Honor, with
- 25 respect --